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IN THE

Supreme Court of the United States

October Term, 1965

No. 1288

ENGLAND, ET AL.,

Appellants,

vs.

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, ET AL.,

Appellees.

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE IN SUPPORT OF APPELLANTS' PETITION FOR REHEARING

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INTEREST OF AMICUS CURIAE

The Nebraska Chiropractic Physicians Association, Inc. is a Nebraska non-profit corporation founded in 1915 shortly after the original Chiropractic Act was passed by the State Legislature of Nebraska providing for the licensure and practice of the profession of Chiropractic.[1] The Association represents the interests of its 61 Doctors who hold active licenses from the Nebraska State Department of Health to practice the healing art of Chiropractic. In addition to the 61 Association members, there are 19 other active licensed Chiropractors in Nebraska. The Association speaks for all 80 active licensed Chiropractors now practicing in the State of Nebraska in matters affecting the survival of the profession.

The Nebraska Chiropractic Physicians Association, Inc. is interested in this litigation because it fears that the decision of the special three judge federal court in this case will be utilized by doctors of medicine and their medical associations, state and national, to support legislative efforts to destroy the practice of chiropractic in states other than Louisiana. The special three judge lower court decision in this case grants to the doctors of medicine the legislative weapon to outlaw all other healing arts which do not follow the theory, practice and methods of the sect known as medicine.

The Nebraska Chiropractic Physicians Association, Inc. fears that if the lower court decision in this case is permitted to stand, due to the history of chiropractic in Nebraska, it is almost certain that oppressive legislation will

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1. Laws of Nebraska, C. 197, §§ 1-7 (1915). Approved at the 34th Session of the Nebraska Legislature, April 1, 1915.

be proposed in the Nebraska Legislature using such decision as precedent, which legislation will be extremely difficult, if not impossible to defeat.

The Nebraska Statutes[2] now require a Doctor of Chiropractic to meet the following qualifications in order to be licensed:

1. Graduate from a four year High School;
2. Graduate from a four year Chiropractic College;
3. Pass a "Basic Science" Examination in the subjects of anatomy, physiology, chemistry, bacteriology, pathology, and hygiene, administered by a Board of laymen, not doctors; and
4. Pass an Examination in Chiropractic administered by a Board of Chiropractors.

The original 1915 Nebraska Chiropractic Act only required license applicants to graduate from high school, chiropractic college and to pass a chiropractic exam.[3] HOWEVER, in 1927, as a part of a nation wide drive by doctors of medicine to eliminate new Chiropractors, the medical associations were successful in securing passage of the "Basic Science" act in Nebraska.[4] The effectiveness of this technique is illustrated by the fact that from 1927 until 1949, twenty-two years later, not one new license in Chiropractic was issued in Nebraska.[5]

It should be noted that the Nebraska laws[6] do not require

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2 Section 71-179, R. R. S. of Nebraska, 1943, as Amended by Chapter 413, Laws of Nebraska, 1965.

3 Note 1 Supra.

4 Sections 71-401 through 71-416, R. R. S. of Nebraska, 1943.

5 Notes 2 and 4 Supra.

a chiropractor to graduate from a medical college and the Nebraska basic science examination does not include the subjects of surgery and materia medica as the Louisiana Statutes[6] do.

This brief survey of legislation affecting Chiropractors in Nebraska demonstrates that the Chiropractic profession is subject to attack by the medical profession and that these attacks very often result in legislation designed to drive the Chiropractic profession out of Nebraska.

The method utilized in Louisiana is very simple; in order for a Louisiana Doctor of Chiropractic to become admitted to practice he must also be a Doctor of Medicine. This is so asinine as to be unbelievable were it not the tragic truth. One does not require a teacher of English to also be a teacher of Greek. The crippling restrictions in Louisiana[7] of (1) requiring a degree from a medical college and (2) requiring an examination in surgery and materia medica were upheld in the instant case. Your amicus curiae fears that these same restrictions will find their way into the statute law of other states, including Nebraska, and Chiropractic will cease to exist as a healing art in the United States.

ARGUMENT

I.

Chiropractic is not medicine.

Since the founding of the separate, independent healing art known as "Chiropractic" by Dr. D. D. Palmer in 1895, the battle has raged between the medical profession and the chiropractic profession. In the beginning, Chiropractors were simply jailed as practicing medicine without a

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6 Louisiana Revised Statutes 37:1271.

7 Note 6 Supra.

license. Seventy-one years later this gloomy prospect still faces Chiropractors in the State of Louisiana.

All of the licensing arguments still being made by the medical profession are based on an original false premise that medicine includes chiropractic. This premise has been shown false by the public policy of 48 states and the District of Columbia which recognize the separate integrity of Chiropractic.[8] In all these jurisdictions a Doctor of Chiropractic to be licensed passes a Chiropractic examination and in some states such as Nebraska, passes both the Chiropractic examination and a "basic science" examination. In none of these states are the subjects of surgery and materia medica included in any of the examinations for chiropractors.

Application of the United States Constitution cannot be accurate to the litigation in this case until the basic truth is recognized that there is no one healing art known as "medicine"; instead there are several healing arts: medicine, dentistry, osteopathy, chiropractic and so forth. When a profession has served the people of the United States for seventy-one years, it is time to take judicial notice that its separate character is a matter of legal fact.

II.

The Due Process Clause of the 14th Amendment to the United States Constitution is violated by a State Statute requiring a person to possess a degree from a medical college and to pass an examination in surgery and materia medica before he may practice the healing art of "Chiropractic".

Your Amicus Curiae do *not* contend that the states

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[8] See Appendix.

are powerless to regulate the practice of Chiropractic. This Court held in *Dent v. West Virginia*, 129 U. S. 114 (1889) that a doctor of medicine could not complain because the state conditioned his right to practice medicine upon a degree from a medical college, or passage of an examination. This Court justified such qualification because the end sought by the legislature was the public's health and the means promoted this end in a fair manner, neither arbitrary nor capricious. In short, the test is, as in all due process questions: Is the end ligitimate? Are the means fair and appropriate to the end?

The *Dent* case held the end (public health) legitimate. Chiropractic may also be licensed by the state. The issue in the instant case is whether the means are appropriate. On this issue the *Dent* case is not an authority for the validity of the state law in this case. In fact, its language is contrary to the holding of the lower court in this case. On page 122 of the *Dent* opinion this Court stated:

> "The nature and extent of the qualifications required must depend primarily upon the Judgment of the State as to their necessity. *If they are appropriate to the calling or profession,* and attainable by reasonable study or application, no objection to their validity can be raised because of their stringency or difficulty. *It is only when they have no relation to such calling or profession,* or are unattainable by such reasonable study and application, they then can operate to deprive one of his right to pursue a lawful vocation." (Emphasis added).

The Louisiana statute,[9] as administered by the State Board of Medical Examiners, requires chiropractors to graduate from a College of medicine and requires that they pass an examination in surgery and materia medica.

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[9] Louisiana Revised Statutes 37:1271.

The record in this case demonstrates that surgery and materia medica are as foreign to the practice of chiropractic as plumbing is to the practice of law. In the words of the *Dent* case these subjects are not "* * * appropriate to the calling * * *" and a State law requiring a chiropractor to present a degree from a college which teaches these subjects and to pass an examination in their subjects operates "to deprive one of his right to pursue a lawful vocation" contrary to the due process clause of the 14th Amendment of the Federal Constitution.

III.

The Equal Protection clause of the 14th Amendment to the United States Constitution is violated by a state law which requires chiropractors to meet the same requirements as medical doctors, when other state laws establish different license requirements for other healing arts.

The equal protection clause does not prescribe different treatment for different subjects. The State is not powerless to classify subjects for different legislative treatment. However, the state must base its classification upon some rational basis. It cannot treat differently, subjects which are substantially alike. In short, the classification or discrimination may not be invidious. As pointed out in the Jurisdictional Statement filed by the Appellants in this case (pg. 15-19) Louisiana has exempted from the Louisiana Medical Practice Act numerous areas of the healing arts, for example: dentists, nurses, homeopathic physicians, osteopaths and podiatrists. The chiropractor alone must meet the demands of the Medical Practice Act.

Such discrimination is invidious. If the public health and welfare is not threatened by osteopaths who have not

graduated from a medical college and who have not passed examinations in surgery and materia medica, the public health will not be harmed by chiropractors who do not meet these requirements either. Chiropractors and osteopaths both practice healing arts separate from medicine and the discrimination resulting from the Louisiana Statute is invidious and discriminatory.

Today, 48 states and the District of Columbia license chiropractors.[10] These states and the District do not require either medical college degrees or examination in surgery and materia medica. If the public health and welfare demanded that chiropractors possess such degrees and pass such examination, we would most certainly find more that two of the 50 states cognizant of the danger.

Respectfully submitted,

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[10] See Appendix.

PROOF OF SERVICE

I, James A. Lake, Sr., one of the attorneys for Amicus Curiae, Nebraska Chiropractic Association, Inc., and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 15 day of July, 1966, I served copies of the foregoing Brief in Support of Motion for Leave to File a Brief Amicus Curiae, on the several parties hereto as follows:

1. On England, et al., Appellants, by mailing copies in a duly addressed envelope, with first class postage prepaid, to their attorneys of record, J. Minos Simon, Post Office Box 52116 OCS, Lafayette, Louisiana, and Floyd J. Reed, 919 Maison Blanche Building, New Orleans, Louisiana.

2. On the Louisiana State Board of Medical Examiners, et al., Appellees, by mailing copies in a duly addressed envelope, with first class postage prepaid, to their attorneys of record, W. Ford Reese, Esquire, Adams and Reese, Attorneys at Law, 1808 National Bank of Commerce Building, New Orleans, Louisiana, and Robert F. LaCorgne, Jr., Esquire, Attorney at Law, National Bank of Commerce Building, New Orleans, Louisiana.

3. On Louisiana State Medical Society, intervenor, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to its attorneys of record, Phelps, Dunbar, Marks, Claverie & Sims, Esquires, 420 Hibernia Bank Building, New Orleans, Louisiana.

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APPENDIX

STATES OF THE UNITED STATES AND THE DISTRICT OF COLUMBIA WHERE CHIROPRACTORS ARE LICENSED WITHOUT BEING REQUIRED TO BE A DOCTOR OF MEDICINE AS IN LOUISIANA.

Year Chiropractic License Act Adopted	Jurisdiction	Citation of Statute
1913	Kansas	Chap. 65, Art. 13; Chap. 74, Art. 13 (Corrick's Gen. Stat. of. Kansas, Anno., 1935); Chap. 65, Secs. 1816, 2201-2205; Chap. 75, §§ 3044-3048 (Corrick, 1945 Supp. to Gen. Stat. of Kansas, 1935).
1913	No. Dakota	Chap. 43-06 (N. D. Rev. Code of 1943).
1915	Nebraska	Chap. 71, §§ 112-115, 102, 110, 162, 177-182, and 401 (Rev. Stat. of Nebraska, 1943).
1915	Oregon	Title 54, Chap. 3 (Oregon Comp. Laws Anno.).
1915	Arkansas	Title 72, §§ 401-414 (Arkansas Statutes Anno.).
1915	Ohio	§§ 1274.1-1274.7 (Page's Ohio Gen. Code Anno.).
1917	Connecticut	Chap. 209, §§ 4378-4387 (Gen. Statutes of Conn., 1949 Revision).
1917	No. Carolina	§§ 90-139 to 90-157 (Gen. Stat. of N. C., 1943).
1918	Montana	Chap. 269 (Anderson & McFarland, Rev. Codes of Mont. 1935).
1919	Florida	§§ 2441-3447 (Compiled Gen. Laws of Florida, 1940 Supp.);

		§§ 460.01-460.27 (Florida Statutes Anno., 1944).
1919	Idaho	Title 54, §§ 701-704 (Bobbs-Merrill, Idaho Code, 1949).
1919	Minnesota	Chap. 148, §§ 148-01-148.10 (Minn. Stat. Anno.).
1919	Vermont	Chap. 286 (Vermont Stat. Rev. of 1947).
1919	Washington	Title 68, Chap. 7 (Remington's Rev. Stat. of Wash. Anno.).
1921	Arizona	Title 67, §§ 701-708 (Arizona Code, Anno.).
1921	Georgia	Title 84, §§ 501-502, 9905 & Title 92, §§ 1909 & 2005 (Georgia Code, 1933).
1921	Iowa	Chapters 146, 147 & 151 (Code of Iowa 1946).
1921	New Hampshire	Chap. 252 (Rev. Laws of N. H., 1942).
1921	New Mexico	Chap. 51, Art. 3 (New Mex. Statutes Anno., 1941).
1921	Oklahoma	Title 59, Chap. 5 (Oklahoma Statutes Anno.).
1921	So. Dakota	Chap. 27.05 (South Dakota Code of 1939).
1922	California	Act 4811, §§ 1-19 (Deering's Calif. General Laws).
1923	Ilinois	Title 91, §§ 1-16(s) (Smith-Hurd, Ill. Ann. Statutes 1945).
1923	Nevada	§§ 1080-1092 (Hillyer, Nev. Comp. Laws, 1929) §§ 1070, 1862-15 (Nev. Comp. Laws, Supplemental 1931-41).
1923	Rhode Island	Chap. 275 (Gen. Laws of Rhode Island, 1938).
1923	Tennessee	Title 15, Chap. 1 & Chap. 7 (Williams Tenn. Code, Ann., 1934).
1923	Utah	Title 79, Chap. 1 (Utah Code Anno., 1943).

1924	Maine	Chap. 65 (Rev. Statutes of Maine, 1944).
1925	Hawaii	Chap. 37 (Revised Laws of Hawaii, 1945).
1925	West Virginia	Chap. 30, Art. 16 (West Virginia Code of 1943).
1925	Wisconsin	Chap. 147, Sec. 147.23 (Wisconsin Stat. of 1943).
1927	Indiana	Title 63, Sec. 1312 (Burns, Indiana Statutes Anno.).
1927	Missouri	Chap. 63 (Missouri Rev. Stat. Anno.).
1928	Kentucky	Chap. 312 (Kentucky Rev. Stat. 1948).
1929	District of Columbia	Title 2, §§ 106, 114. 117, 120 & 121 (Healing Arts and Practice Act, Title 2, §§ 101-140, D. of C. Code, 1940 Ed.).
1929	Maryland	Art. 43, §§ 441-456; Art. 41, § 162. Flack, Anno. Code of Maryland).
1929	Wyoming	§§ 33-134—§§ 33-150 (Wyoming Statutes Annotated, 1957).
1932	So. Carolina	§ 5162 (Code of Laws of South Carolina, 1942).
1933	Colorado	Chap. 34 (Colorado Statutes, Anno.).
1933	Michigan	Chap. 120, §§ 6739, 6740, 6743 & 6755 (Comp. Laws of Michigan).
1937	Delaware	Chap. 6, Art. 16, §§ 193, 194 & 200 (Rev. Code of Del. 1935).
1939	Alaska	Title 35, Chap. 3, §§ 21-30 (Alaska Comp. Laws Anno.).
1944	Virginia	Chap. 68 (Virginia Code of 1942, Anno.).
1949	Texas	Chap. Six A, Art. 4512b, §§ 1-24 (Vernon's Anno. Rev. Civ. Stat. of Texas, 1960).
1951	Pennsylvania	62 P. S. §§ 601-625 (1959).

1953	New Jersey	Title 45, Chap. 9 §§ 1,5.1, 14.5 & 14.9 (N. J. Statutes, Anno.).
1959	Alabama	Title 46, § 259, Title 51, § 565 (Code of Ala. 1940).
1963	New York	Education Law §§ 6550-6565 (McKinney's Cons. Laws of N. Y.).
1966	Massachusetts	Chapter 409 of Acts of 1966, Laws of Massachusetts.

END